

REMARKS

Claims 1-5 and 7-14 are pending. Of these, claims 1 and 10 are independent. Previously, claim 6 was canceled.

By this reply, claims 7-14 have been added. Claims 7-8 and 13 depend at least indirectly from claim 1 and are patentable at least for the same reasons; see discussion below. Independent claim 10 recites features similar to claim 1. Thus, claim 10 is patentable at least for reasons similar to those given below regarding claim 1. Claims 11-12 and 14 depend at least indirectly from claim 10 and are patentable at the least for similar reasons.

OBJECTION TO THE DRAWINGS

On page 2 of the Office Action has reiterated the objection that Figs. 1, 2 and 2B should be designated by the legend "Prior Art" because only that which is old is illustrated. Applicants disagree with this objection.

As originally filed, Figs. 1 and 2A-2B are labeled "Related Art". One of ordinary skill in the art would have understood that such labels indicate that Figs. 1 and 2A-2B do not *per se* represent a point of novelty regarding the present invention. Though Figs. 1 and 2A-2B do not represent a point of novelty regarding the present invention, they are not necessarily prior art as defined under the subsections of 35 U.S.C. §102. Accordingly, Applicant prefers not to label Figs. 1 and 2A-2B as "Prior Art" because of the unnecessary characterization that doing so may make.

By having already labeled Figs. 1 and 2A-2B as not representing a point of novelty regarding the present invention, Applicants have satisfied their obligation of making the status of Figs. 1 and 2A-2B clear relative to the other Figures in the present application. The Examiner's continued objection places an improper burden upon Applicants.

In view of the foregoing discussion, withdrawal of the drawing objection is requested.

REJECTION UNDER 35 U.S.C. § 112

Beginning on page 2 of the Office Action, claims 1-5 stand rejected under 35 U.S.C. § 112, second paragraph, as being indefinite. This rejection is traversed.

By this reply, Applicants have made clarifying changes to claims 1-5. In view of those changes, withdrawal of this rejection is requested.

§ 102 REJECTION – ‘141 PATENT

Beginning on page 4 of the Office Action, claims 1-5 stand rejected under 35 U.S.C. § 102(b) as being anticipated by USP 5,440,141 to Horie (“the ‘141 Patent”). This rejection is traversed.

It is acknowledged that the ‘141 Patent teaches Fast Fourier Transformation of a set of data; see column 10, lines 63-65. The set of data that is transformed is described in lines 47-62 of column 10 as being the measured reflection ratios $R_m(\lambda)$, or a version thereof that is based upon wave number instead of wavelength. Calculation of the measured reflection ratios $R_m(\lambda)$ is described in Equation No. 1 of column 9. It is assumed for the sake of argument that the data that is transformed represents intensities that vary as a function of wavelength. It should be noted, however, that such intensities vary only as a function of wavelength.

A distinction of amended claim 1 over the ‘141 Patent is transforming a second spectrum that exhibits variation as a function of wavelength and refractive index. Again, according to the ‘141 Patent, the data upon which the transformation is performed varies only according to wavelength. Claims 2-5 depend at least indirectly from claim 1 and are patentable at least for the same reason.

In view of the foregoing discussion, withdrawal of this rejection is requested.

CONCLUSION

The issues raised in the Office Action are considered to be resolved. Accordingly, Applicant again requests a Notice of Allowability.

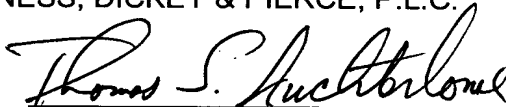
If the Examiner believes that personal communication will expedite prosecution of this application, the Examiner is invited to contact the undersigned.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge any underpayment or non-payment of any fees required under 37 C.F.R. §§ 1.16 or 1.17, or credit any overpayment of such fees, to Deposit Account No. 08-0750, including, in particular, extension of time fees.

Respectfully submitted,

HARNESS, DICKEY & PIERCE, P.L.C.

By:


Terry L. Clark, Reg. No. 32,644
P.O. Box 8910
Reston, VA 20195
(703) 668-8000

#37275

TLC/TSA/cm